Editor's note: 80 I.D. 212

PLACID OIL COMPANY

IBLA 72-255 Decided February 16, 1973

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying offers for future interest oil and gas leases, unless evidence of a continued control over the operating rights by applicant is submitted within 30 days.

Affirmed as modified.

Oil and Gas Leases: Future and Fractional Interest Leases

Where an applicant for a future interest oil and gas lease of acquired lands has interests only in the land below 1,000 feet below the surface, it does not own or control all or substantially all of the present operating rights to the minerals in the land; if it seeks only a lease for the zone below 1,000 feet, it is requesting a lease of a horizontal zone, which is granted, if at all, only where the need for it is clear and convincing; in either case its offer for a future interest lease must be rejected.

APPEARANCES: Walter Fraker, for Placid Oil Company; Gayle E. Manges, Field So licitor, for Department of the Interior.

OPINION BY MR. RITVO

Placid Oil Company has appealed from a decision 1/ by the New Mexico State Office, Bureau of Land Management, denying future interest oil and gas lease applications NM A-10938, NM A-10940 through NM A-10943, unless Placid Oil Company submits evidence within 30 days to demonstrate its continued control over the operating rights between the expiration date of the primary term of its lease, May 28, 1974, and the date the mineral interest will vest in the United States, January 2, 1985.

Placid Oil Company filed future interest offers on December 10, 1969, for lands located in the Sabine National Forest in Texas. The records show that the United States acquired title to the lands by warranty deed dated December 27, 1935, subject to a reservation by

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1/ The December 23, 1971, decision covered offers NM-A-10937 through 10939. The January 3, 1972, decision modified the December 23, 1971, decision in that it required a further certificate of title for offers NM-A-10937 and NM-A-10939, certifying the mineral interest outstanding only in these two tracts; the earlier decision had required a further certificate of title, as required by regulation 43 CFR 3130.4-5, for all the offers. These two offers are not involved in this appeal.

the grantor of all the minerals until January 1, 1985, to be extended in the event of commercial production.

By "Oil and/or Gas Lease" Agreement dated May 27, 1969, Temple Industries, Inc., successor to the mineral interests in the land, granted to Placid Oil Company an oil and gas lease for lands below 1,000 feet below the surface for a period of five years. Concerning the possibility of extension of the period ofrental, in a letter of January 18, 1972, to the Bureau, applicant stated:

> "At the time applicant acquired its present lease covering the present mineral interest, we were unable to negotiate for a primary term longer than 5 years. Based upon our prior negotiations with the owner of the present mineral interest, we doubt that we would be successful in renewing the present lease upon the expiration of its primary term for a term of more than five years."

Appellant thus in essence admits that absent production, it will not have continued ownership or control of operating rights to the present mineral interests, between the expiration date of May 28, 1974, and January 2, 1985. However, citing Clare Davis Pickens, Colorado 0109978, November 15, 1963, appellant argues that the policy of the Bureau of Land Management in issuing future interest leases should encourage further resource development. Therefore, appellant argues, since he cannot operate beyond the 1974 lease date, he will

be discouraged from now attempting to develop the land for oil and gas. Since his future interest lease rights would not vest unless he produces oil, appellant further argues, the Government will have nothing to lose by granting a future interest lease.

The State Office's decision denying the applications was based on 43 CFR 3130.4-5. Citing Smead Stewart, BLM A-047789-92 (May 8, 1961), the State Office decided that since Placid did not have continued control over the operating rights between the expiration date of the primary term of its lease and the date the mineral interest would vest in the United States, its applications for future interest leases should be rejected.

We believe the Bureau's ruling should be upheld, but on a different ground. 43 CFR 3130.4-5 dealing with future interest offers states:

> (a) Application. A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as an operator holding such rights. * * * (Emphasis added)

Without deciding whether Placid would otherwise qualify as an applicant, we find the requirement that an offeror own or lease

--"all or substantially all" of the present operating rights disqualifies Placid since the lease granted by Temple to Placid gives rights to oil and gas exploration only below 1,000 feet.

We note that Placid's offer was not limited to the zone covered by its lease from Temple. Such partial ownership does not constitute substantially all of the present operating rights in the lands in the offer, as required by the regulation.

The Department's disapproval of leasing future or fractional interests where the applicant does not own substantially all of the present operating interests is based upon the concept that any leasehold should have a continuity of term. Fritz, Mineral Problems Relating to Acquired Lands, 3 Rocky Mt. Min. L. Inst. 379, 385 (1957). To give Placid a future interest lease for the first 1,000 feet would violate this practical policy, since it has no present operating rights for that zone.

Even if the "ownership" required by the regulation were to be considered as applying only to the rights Placid has, that is, those below 1,000 feet from the surface, a lease granting such rights to it would be a lease of a separate horizontal zone. While there are

no specific prohibitions against such leasing in the law or regulations, the practice has been "most uncommon in the Department." Clear Creek Inn Corporation, 7 IBLA 200, 202, 79 I.D. 571 (1972).

However, as that case points out, the Secretary may approve assignments of a separate zone or deposit in an existing oil and gas lease. The Mineral Leasing Act so provides, 30 U.S.C. § 187(a); but the pertinent regulation states that such an assignment will not be approved unless the necessity therefor is established by clear and convincing evidence. 43 CFR 3106.3-2.

Applying this standard, to Placid's request for future interest leases, we can find no necessity for creating leases of a separate zone. On the other hand, if Placid seeks leases as to all the lands without zonal separation, it does not, as we have noted above, own substantially all of the present operating rights to the lands in the offer. In either case, its offers must be rejected.

Since the appellant's offers must be rejected, the State Office decision is modified by removing the possibility that it could qualify by submitting the evidence that decision held necessary.

This decision, however, is not to prejudice applicant from reapplying for a future interest lease in conjunction with the

continuing owner of the mineral interest (Temple), or upon its own acquisition of that interest.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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Martin Ritvo, Member

We concur:

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Frederick Fishman, Member

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Anne Poindexter Lewis, Member